

Message Text

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PAGE 01 STATE 240292

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DRAFTED BY L/M: HFSHAMWELL, JR.:MFM

APPROVED BY L/M: KEMALMBORG

EUR/EX - MR. BASKEY

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----- 041571

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FM SECSTATE WASHDC

TO AMEMBASSY DUBLIN

UNCLAS STATE 240292

E.O. 11652: N/A

TAGS: PFOR, AFSP

SUBJECT: REQUEST FOR WAIVER OF DIPLOMATIC IMMUNITY

REF: DUBLIN 1734

1. REFTTEL REQUESTED DEPT'S GUIDANCE ON PROPOSED WAIVER OF IMMUNITY RESPECTING CIVIL AND ADMINISTRATIVE JURISDICTION FOR EMBOFF JOHN A. MURTHA. SUCH WAIVER WOULD PERMIT EMBOFF TO SECURE MORTGAGE FOR PURCHASE OF PRIVATE RESIDENCE.

2. IN KEEPING WITH CURRENT POLICY, DEPT. DOES NOT REPEAT NOT CONSENT TO FULL WAIVER OF CIVIL AND ADMIN. JURISDICTIONAL IMMUNITY IN VIEW OF POSSIBILITY OF UNDUE INTERFERENCE WITH OFFICIAL ACTIVITIES OF EMBOFF. AS GENERAL RULE, WAIVERS OF IMMUNITY OF DIPLOMATIC MISSION PERSONNEL ARE EXECUTED IN RESPONSE TO SPECIFIC EVENTS IN WHICH QUESTIONS OF IMMUNITY MAY BE RAISED (E.G., A CRIMINAL PROSECUTION OR CIVIL ACTION AGAINST A DIPLOMATIC OFFICER). ONLY IN THIS WAY CAN A REASONED JUDGMENT BE MADE WHICH TAKES INTO PROPER CONSIDERATION THE INTERESTS OF ALL INVOLVED.

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PAGE 02 STATE 240292

3. THE ESSENCE OF EMBASSY'S REQUEST, HOWEVER, IS FOR

PERMISSION TO ALLOW A PARTIAL WAIVER OF MR. MURTHA'S
IMMUNITY TO ALLOW JURISDICTION TO BE EXERCISED OVER HIM
IN THE EVENT THAT AN ACTION RELATING TO HIS PRIVATE REAL
ESTATE TRANSACTION IS BROUGHT AGAINST HIM. DEPARTMENT
HAS NO OBJECTION TO THIS PARTIAL WAIVER, BUT QUESTIONS
POSITION OF DEPT. OF FOREIGN AFFAIRS THAT ARTICLE 31(L)(A)
OF VIENNA CONVENTION IS NOT APPLICABLE. WOULDN'T STATE-
MENT BY EMBASSY THAT PROPERTY IS NOT HELD ON BEHALF OF
THE SENDING STATE FOR PURPOSES OF THE MISSION SUFFICE?
IF NOT, DEPT. WOULD AUTHORIZE PARTIAL WAIVER, BUT ONLY
IF EXPRESSLY WORDED TO EMBRACE ACTIONS DESCRIBED IN CITED
PROVISION OF VIENNA CONVENTION. KISSINGER

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